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Nova Scotia Securities Commission
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June 19, 2017

Dear Sirs/Mesdames:

CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*

This letter is in response to the request for comment on the Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers.*

We have addressed a number of matters on which specific comment was requested below. We did not respond to questions we believe would be best answered by investors or preparers.

2.1 Extending the application of streamlined rules to smaller reporting issuers

- Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?
  - We believe whatever distinction is drawn that the categorization should be transparent to investors. We also believe the categorization should be relatively stable so investors can have reasonable expectations regarding reporting deadlines and the extent of reporting.
  - The current distinction based on exchange listing has the advantage of being very transparent and stable. Further, smaller non-venture issuer that prefer the reporting requirements available to venture issuers have the ability to switch exchange listings if that is what they desire and their investors would not object. Larger venture issuers do periodically move to the TSX and become non-venture issuers when they believe they are ready for the additional reporting requirements.
  - A size based distinction would have the advantage of acknowledging differing investor expectations regarding financial reporting from larger vs smaller issuers and is not subject to abuse (e.g. a larger issuer avoids reporting requirements be staying on the venture exchange). A size based distinction would likely be the most fair provided the correct metric for size could be determined; however, would require considerable change to existing rules and may result in less consistency as reporting issuers may move more frequently from one categorization to another depending on the metrics chosen.
  - Generally, we do not prefer adding another layer within the current framework such as (1) larger non-venture issuers (2) smaller non-venture issuers (3) venture issuers with differing reporting requirements. The distinction between what reporting to expect for (2) and (3) would likely be unclear to investors. However, minor accommodations within category (2) such as different reporting deadlines for smaller non-venture issuers may be a way to ease the regulatory burden on such reporting issuers without compromising the quality of the information being delivered and as such, we would support a change of that nature.
- If we were to adopt a size-based distinction: (a) What metric or criteria should be used and why? What threshold would be appropriate and why? (b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year? (c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject? (d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

  - If such a distinction were to be made we would recommend use of criteria based on market capitalization measured 6 months prior to the fiscal year end. Market capitalization is an objective measure of the interest investors have in an entity and does not depend on financial statement results which may or may not have had any independent review as of an interim date. Measurement 6 months prior to the fiscal year end, we believe allows the preparer sufficient time to address the changed reporting requirements while not delaying the process too much for investors.
  - We would recommend that the issuer profile on SEDAR be modified to clearly identify the category of reporting issuer. This should also be identified with a preamble to the Annual Filing Form assuming such a form is adopted.

- If the current distinction for venture issuers is maintained, should we extent less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why??
  - Yes. The elimination of the requirement for pro forma financial statements should be extended to non-venture issuers. Also as noted above, we would support less onerous reporting deadlines for smaller non-venture issuers.

2.2 Reducing the regulatory burden associated with the prospectus rules and offering process

a) Reducing the audited financial statement requirements in an IPO prospectus

- Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuer? If so: (a) How would this amendment assist in efficient capital raising in the public market? (b) How would having less historical financial information on non-venture issuers impact investors? (c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not? (d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?
  - We believe this question is best answered by investors.
  - We have observed that certain transactions are delayed because of challenges related to completing an audit regarding the most historic information.
- How important is the ability to perform a three year trend analysis?
  - We believe this question is best answered by investors.

b) Streamlining other prospectus requirements

- Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

  - We note that irrespective of any regulatory changes when a Canadian auditor is involved in a prospectus an interim review will be required. Prospectus rules require auditors to consent to the use of their audit report. OCS 7150 *Auditor's Consent to the Use of a Report of the Auditor included in an Offering Document* requires that "when an offering document includes unaudited financial statements of the entity and an engagement to review the unaudited financial statements has not been performed, the auditor shall perform review procedures on the unaudited financial statements in accordance with Section 7060 or CSRE 2400." So irrespective of any regulatory changes when a Canadian auditor is involved in a prospectus an interim review will be conducted.
  - Given the fact that removal of this requirement for an interim review may only impact situations when a non-Canadian auditor is conducting the review because of the requirements of OCS 7150 noted above, we would not recommend the change.

- Should other prospectus disclosure requirements be removed or modified, and why?
  - We believe this question is best answered by preparers and investors. However, if changes are made to the BAR rules we believe similar accommodations should be made to prospectus requirements related to (proposed) acquisitions.

c) Streamlining public offerings for reporting issuers

- Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.
  - We believe this question is best answered by preparers and investors.
- Should we extend the availability of the short form prospectus offering system to more issuers? If so, please explain for which issuers, and why this would be appropriate.
  - We believe this question is best answered by preparers.
- Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers: (a) what should the key features and requirements of any proposed alternative prospectus model be? (b) What types of investor protections should be included under such a model (for example, rights of rescission) (c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?
  - We believe this question is best answered by preparers and investors.
- What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?
  - We believe this question is best answered by preparers and investors.

- Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?
  - We believe this question is best answered by preparers and investors.
- Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers.
  - We believe this question is best answered by preparers and investors.
- As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and is so in what way
  - We believe this question is best answered by preparers and investors.

2.3 Reducing ongoing disclosure requirements

a) Removing or modifying the criteria to file a BAR

- Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?
  - We believe the removal of the requirement for pro forma financial statements for venture issuers should be considered by the CSA. We have concerns regarding whether the purpose of pro forma financial statements are misunderstood by preparers and by extension users. Also we believe investors are confused when different pro form information appears in the financial statements in compliance with IFRS 3 B64 (q) (ii) and IAS 34 16(A) (i) which can create confusion in the marketplace.
- Are there certain BAR requirements that are more onerous or problematic than others?
  - We believe for the real-estate industry it may be more practicable to provide a Statement of Direct Revenue and Expenses rather than a carve-out financial statement as typically significant allocations are required to create the carve-out financial statements related to the asset(s) acquired and the information is of limited use to the investor because the asset(s) will be combined a portfolio of existing assets and such allocated costs will be irrelevant.
- If the BAR provides relevant and timely information to investors: (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements? (b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision? (c) What alternative tests would be most relevant for a particular industry and why? (d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus level disclosure? Why or why not?

- Generally, we believe these questions are best answered by preparers and investors.
- In practice, we have observed that the significance test related to profit and loss can at times result acquisitions that are relatively insignificant being included because of one-time events. We would recommend consideration be given to changing to adding an optional test based on revenue when an asset is only significant based on the profit and loss test.

b) Reducing disclosure requirements in annual and interim filings

- Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?
  - We believe this question is best answered by preparers and investors.
- Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.
  - We believe this question is best answered by preparers.

c) Permitting semi-annual reporting

- What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?
  - We believe the benefits of quarterly reporting are that it instills a certain discipline around the financial reporting process. Certain accounting assessments are required to be made each reporting period (e.g. impairment triggers, going concern) and that with less frequent reporting such analysis will not be completed as regularly which may delay the timely reporting of such important matters. Additionally, without timely reporting, investors will not be informed of the use of proceeds from prospectus activities on a timely basis.
  - The concerns or burdens associated with quarterly reporting are best answered by preparers.
- Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?
  - Semi-annual reporting may be a viable option for reporting issuers with no revenue. That said, we believe certain disclosures should be required related to the use of any proceeds raised.
- Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?
  - For reporting issuers with operating businesses, we believe timely information is valued in the marketplace and in the absence of requirements information likely would still be disclosed with possibly less due diligence around the disclosures. That said, we believe investors are in the best position to answer this question.

- Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?
  - For the issuers above, where we indicated semi-annual reporting may be a viable option (e.g. issuers with no revenue), this style of reporting could also be an alternative.

2.4 Eliminating overlap in regulatory requirements

- Would modifying any of the above areas in MD&A form requirements result in a loss of significant information to an investor? Who or why not?
  - We support the concept of removing duplicative information. We believe combining reporting into one Annual Report would facilitate this approach as the risk of an investor not referring to relevant information contained elsewhere would be reduced.
  - The CSA should also consider encouraging preparers to cross-reference to other documents when information is duplicative provided investors do not object to reading the information in a piecemeal fashion.
- Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?
  - Areas of overlap with IFRS requirements include liquidity (1.6), transactions between related parties (1.9) and changes in accounting policies including initial adoptions (1.13).
- Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?
  - Yes. One document reduces the need for duplication and creates clarity for investors regarding where to obtain information. We would also recommend including the NI 52-109 certification in the Annual Report for non-venture issuers. We recognize this may create pressure on preparers at smaller non-venture issuers, but believe the CSA should address this by extending the deadlines for filing for such issuers.
- Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure in complete, relevant, clear, and understandable for investors.
  - We believe this question is best answered by preparers.

2.5 Enhancing electronic delivery of documents

c) Permitting semi-annual reporting

- Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?
  - We believe this question is best answered by preparers.
- The following consultation questions pertain to the “notice-and-access” model under securities legislation and consideration of potential changes to this module: (a) Since the adoption of this “notice-and-access” amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specially requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available? (c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies? (d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

  – We believe this question is best answered by preparers and investors.

- Are there other ways electronic delivery of documents could be further enhanced through securities legislation?
  – We believe this question is best answered by preparers and investors.

Thank you for the opportunity to comment on CSA Consultation Paper 51-404. Should you wish to discuss our comments in more detail, we would be pleased to respond.

Yours truly,

[redacted]

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